# SENATE RECORD VOTE ANALYSIS

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2nd Session | **Vote No. 56** | Page S-2995 Temp. Record

## LINE-ITEM VETO CONFERENCE/Passage

**SUBJECT:** **Line-Item Veto Act . . . S. 4. Agreeing to the conference report.**

### ACTION: CONFERENCE REPORT AGREED TO, 69-31

**SYNOPSIS:** The conference report to accompany S. 4, the Line-Item Veto Act, will amend the Budget Act to provide the President with the authority to cancel line items of discretionary budget authority, new direct spending, and limited tax benefits, as detailed below.

Scope:

- the authority will only apply to items covered by bills or joint resolutions that the President has signed into law;
- the authority will not apply to disapproval bills (see below);
- the President will only veto an item if he determines that such cancellation will reduce the Federal budget deficit, will not impair any essential Government function, and will not harm the national interest;
- cancelled items will have to be cancelled in whole;
- the Act will become effective upon the earlier of the enactment of a plan to balance the budget in 7 years or January 1, 1997, and will sunset on January 1, 2005;
- the President will have authority to cancel the whole amount of discretionary budget authority: listed for an item in an appropriations law; required to be allocated by a specific provision in an appropriations law for which a specific dollar amount is not included; represented separately in any table, chart, or explanatory text included in the statement of managers or the governing committee report for an appropriations law; required by a law other than an appropriations law to be spent on a specific purpose using budget authority provided in an appropriations law; or required by a law to be used to purchase a specified quantity of an item;
- the President will not be given any authority to cancel line items rescinding budget authority or placing restrictions, conditions, or limitations on the expenditure of budget authority;
- the term "limited tax benefit " will mean, with exceptions: any revenue-losing provision which provides a Federal tax deduction, credit, exclusion, or preference to 100 or fewer beneficiaries under the Internal Revenue Service (IRS) code in any fiscal year; or

(See other side)

| YEAS (69) | | | NAYS (31) | | NOT VOTING (0) | |
|---|---|---|---|---|---|---|
| Republicans (50 or 94%) | | Democrats (19 or 40%) | Republicans (3 or 6%) | Democrats (28 or 60%) | Republicans (0) | Democrats (0) |
| Abraham | Hutchison | Baucus | Cohen | Akaka | | |
| Ashcroft | Inhofe | Biden | Hatfield | Bingaman | | |
| Bennett | Kassebaum | Bradley | Jeffords | Boxer | | |
| Bond | Kempthorne | Breaux | | Bryan | | |
| Brown | Kyl | Daschle | | Bumpers | | |
| Burns | Lott | Dorgan | | Byrd | | |
| Campbell | Lugar | Exon | | Conrad | | |
| Chafee | Mack | Feingold | | Dodd | | |
| Coats | McCain | Feinstein | | Ford | | |
| Cochran | McConnell | Graham | | Glenn | | |
| Coverdell | Murkowski | Harkin | | Heflin | | |
| Craig | Nickles | Kennedy | | Hollings | | |
| D'Amato | Pressler | Kerry | | Inouye | | |
| DeWine | Roth | Kohl | | Johnston | | |
| Dole | Santorum | Lieberman | | Kerrey | | |
| Domenici | Shelby | Robb | | Lautenberg | | |
| Faircloth | Simpson | Simon | | Leahy | | |
| Frist | Smith | Wellstone | | Levin | | |
| Gorton | Snowe | Wyden | | Mikulski | | |
| Gramm | Specter | | | Moseley-Braun | | |
| Grams | Stevens | | | Moynihan | | |
| Grassley | Thomas | | | Murray | | |
| Gregg | Thompson | | | Nunn | | |
| Hatch | Thurmond | | | Pell | | |
| Helms | Warner | | | Pryor | | |
| | | | | Reid | | |
| | | | | Rockefeller | | |
| | | | | Sarbanes | | |

**EXPLANATION OF ABSENCE:**

1—Official Buisiness
2—Necessarily Absent
3—Illness
4—Other

**SYMBOLS:**

AY—Announced Yea
AN—Announced Nay
PY—Paired Yea
PN—Paired Nay

**Compiled and written by the staff of the Republican Policy Committee—Don Nickles, Chairman**

any Federal tax provision that provides temporary or permanent transitional relief for 10 or fewer beneficiaries in any fiscal year from a change to the IRS code.

Process:

- for each law from which a cancellation or cancellations are made, the President will notify Congress by transmitting a special message within 5 calendar days (excluding Sundays) after the enactment of the law;
- each special message will contain specified information, including the dollar amount(s) that have been cancelled, with a corresponding reference number for each cancellation, and the reasons for each cancellation;
- a cancellation will become effective upon receipt by the House and the Senate of a special message on it; discretionary authority will be rescinded, and new direct spending or a targeted tax benefit will be rendered void;
- a special cancellation message will be printed in the first issue of the FEDERAL REGISTER published after its transmittal;
- expedited procedures will be followed by Congress to consider "disapproval bills" that will reenact cancelled items;
- a "disapproval bill" will mean a bill or joint resolution that only disapproves one or more cancellations of dollar amounts of discretionary budget authority, items of new direct spending, or limited tax benefits;
- Congress will have 30 calendar days in which both Houses are in session to complete consideration of a disapproval bill;
- the President will be able to veto a disapproval bill, and a two-thirds vote of those present and voting in both Houses will be needed to override a veto.

Deficit reduction:

- any savings from cancelling a particular dollar amount of discretionary budget authority, item of new direct spending, or limited tax benefit will be used to reduce the deficit by making the necessary reductions in spending caps to prevent those savings from being spent.

Expedited review:

- any Member or any individual adversely affected by this Act will be permitted to bring an action in the United States District Court for the District of Columbia for declaratory judgment and injunctive relief on the ground that any provision of this Act violates the Constitution;
- any order issued pursuant to such an action will be appealable directly to the Supreme Court; and
- it will be the duty of the District Court and the Supreme Court to expedite the consideration of any such case.

**Those favoring** final passage contended:

Passage of this bill will restore the balance of power between the Executive Branch and the Legislative Branch by giving the President line-item veto authority. The President will be given a useful tool for eliminating wasteful spending and Congress will consequently avoid slipping unjustifiable, special interest items into large spending bills. Historically, we know that allowing the President to restrict spending for individual items has worked; we also know from States' experiences that it still works today. This bill is comprehensive; it will apply to appropriations, new entitlements, and limited expenditures.

S. 4 will restore the original intent of our Founding Fathers in granting the President the power to veto bills and resolutions. In the early years of our Republic, appropriations bills ran only a few pages, and all the spending details were included in those pages. Committee reports with hundreds of detailed line items did not exist. The power to veto a bill was for all practical purposes the same as the right to veto individual line items, because bills were essentially line-item bills. As government grew, bills became larger, and the value of the veto declined because it is difficult for a President to veto a large bill containing worthwhile items solely because of a few objectionable features.

However, President's possessed a check on wasteful spending similar to the authority granted by this bill that was widely used until recently. That check, impoundment authority, was exercised by virtually all Presidents as a matter of routine administrative discretion until 1974, when Congress outlawed it as part of the Budget Act. For example, Thomas Jefferson refused to spend $50,000 that Congress had appropriated to purchase gunboats, President Grant impounded funds for public works projects that he thought were unjustified, and President Johnson impounded funds to reduce inflation.

The practice of passing large, omnibus bills with porkbarrel riders first became commonplace after the Civil War. This practice increased the use of impoundment authority, which created controversy because the right to impound funds was only implicit. The question was never decided in court, but complaints from Members were common. Not all Members complained at the impoundment of excessive spending; some Members argued instead for the restoration of original congressional intent by giving the President line-item veto authority. Such legislative proposals have been a constant in Congress since the Civil War.

Starting with the New Deal, and expanding rapidly in the 1960s, the perception of the proper scope of Government activities increased tremendously. Presidential impoundment of funds had a commensurate increase. President Nixon exercised the power the most freely, impounding between 17 percent and 20 percent of controllable funds. This frequent use was seen as abuse by a liberal Congress anxious to spend more money, and, when the Presidency was weakened by Watergate, Congress used the opportunity to take away this power from the President when it passed the Budget Act in 1974. In its place Congress gave the "power" to propose recessions.

Not uncoincidentally, deficit spending exploded after this congressional action. The General Accounting Office (GAO) reports that from passage of the Budget Act to 1994 Presidents requested 1,084 rescissions totalling $72.8 billion. Congress approved only 399 of those requests totalling $22.9 billion. Most requests were simply ignored. Wasteful spending on items that served no national interest but which were of parochial interest to Members skyrocketed because Members knew that without line-item veto or impoundment authority the President had little ability to stop it. He could either accept a bill trimmed with wasteful fat or veto it. When porkbarrel spending has been attached to must-pass legislation, such as continuing funding resolutions or emergency aid bills, presidents understandably have not exercised their veto authority to remove it. Porkbarrel spending has not been the major cause of the escalating deficits that have been run since 1974, but it has been a significant contributing factor. Since the removal of impoundment authority in 1974, and the resulting loss of spending restraint, the calls for the restoration of original intent by giving the President the power to veto spending line items have increased tremendously.

Though the Federal Government has so far failed to act, 43 States have adopted some form of the line-item veto; many of those States have had the line-item veto for 100 years or more. The States have found that it works. A recent Cato Institute survey of 118 former and current Governors found that 69 percent of them had found that having a line-item veto of individual spending items was "a very useful tool" in balancing their State budgets, and 23 percent had found that it was a "somewhat useful tool." Only 7 percent said it was not useful. Not surprisingly, these Governors (92 percent) said that they thought that the President should be given line-item veto authority over spending. The support was bipartisan--88 percent of Democratic respondents, including President Clinton, agreed that the President should be given this authority.

The items covered by S. 4 will be discretionary appropriations, new direct spending (generally entitlements), and targeted tax expenditures. In the past, the focus has been solely on discretionary appropriations, but a consensus has gradually developed in Congress that this focus is too narrow because such appropriations comprise only 35 percent of all expenditures, and in a few years they probably will be down to 25 percent. Direct spending is growing and must be controlled. We are therefore very pleased that the line-item veto will apply to new direct spending as well as to discretionary appropriations. As for targeted tax expenditures, many of us are pleased with the narrow definition for them in the conference report because we question whether it is legitimate to call a tax reduction which allows people to keep more of the money they have earned an "expenditure." Others of us are disappointed with this narrow definition, but are pleased that the principle that tax loopholes should be subjected to a line-item veto has been retained.

Several arguments have been raised against S. 4, none of which has merit. First, some Senators have argued that it will transfer too much power to the Executive Branch. We agree that S. 4 will transfer power, but, as discussed above, we believe that this transfer will restore the balance of power between the Executive and Legislative Branches as it existed before it was upset by the gradual increase in the size of bills and by the elimination of impoundment authority. The next charge against S. 4 is that it will be used by the President to coerce individual Members. We emphatically disagree. If a President were to succumb to this behavior, we think Congress, the press, public opinion, and ultimately the voters would exact retribution. Presidents will understand this fact and will consequently not succumb to the temptation to misuse this authority.

The third major argument against this conference report is that it is unconstitutional because it will give the President a "legislative veto" over spending. We disagree. This report will give the President discretion. Virtually every measure enacted by Congress gives the Executive Branch some discretion in its execution. Very commonly, authority is given to act, but no requirement is made to act. This bill will extend this practice, which is followed on virtually every other law and which until 1974 implicitly applied to spending measures, to appropriations bills, new direct spending bills, and targeted tax benefits. If it is unconstitutional for Congress to give the Executive Branch the discretion not to use spending authority that it gives it to use, then it is unconstitutional for Congress to give the Executive Branch the discretion not to use any other authority. In this instance, Congress will limit the President's discretion by only allowing him to veto the whole amount of items as they are listed in bills or accompanying documents; ordinarily the discretion that is ceded is not so limited. Sometimes when authority is ceded to the Executive Branch it is ceded without a time limit. Future Congresses can only take back the ceded authority by passing another law, if necessary over the President's veto. At other times, authority is only granted temporarily. In this case, authority will be temporary--the President will be able to exercise the line-item veto for just 8 years. At the end of that time, we expect that most Members will agree that it has worked well in practice and will vote to extend it.

When S. 4. is put into effect, Members will be less inclined to slip unjustified, special interest items into the fine print of appropriations and tax bills. The old practice of "log rolling" (agreeing to support another Member's pork in return for that Member agreeing to support one's own pork) will become a nearly extinct practice. We know that the enactment of this conference report will not be enough by itself to stop uncontrolled deficit spending, but if exercised with care and diligence by a President it will help considerably. We are therefore delighted to vote in favor of passage.

**Those opposing** final passage contended:

True conservatives should violently oppose final passage of S. 4. It is one of the most dangerous pieces of legislation ever considered by Congress. S. 4 will strike at the very heart of our form of representative government by transferring an enormous amount of legislative power from the Congress to the President. Millennia of experience have demonstrated that the power of the purse, to raise and spend money, is the greatest power of government, and that the strength of any democracy can be measured by how closely this power has been tied to the people's branch of the government, the legislature. In our federal system of government especially it is important to maintain legislative control over the purse. Failing to do so will undermine our country.

If this bill becomes law, the President will have sweeping new powers. With the support of only one-third of either body of Congress, he will be able to eliminate funding for projects, programs, agencies, and even departments authorized and enacted by Congress. President Clinton, if he gets the chance, will probably target defense, eliminating funding for ballistic missile defenses and other initiatives. President Reagan, if he had been given this power, would have probably exercised it by eliminating the Department of Education and the Department of Energy, both of which he proposed eliminating. Welfare, highways, housing, nutrition, environment, NASA, and anything else the Federal Government spends money on could be canceled by the President with the acquiescence of one-third of the Members of either body. Nothing in this bill will limit the President to cutting so-called pork--he will be able to cut any line item of spending. The transfer of power will be absolutely enormous.

Our reason for fearing this transfer goes well beyond any narrow parochial concerns over projects in our particular States. In all candor, we do not have any particular reason to believe that our current President is likely to make great use of this power, nor do we believe that he will misuse it as a weapon against Senators with whom he has policy disagreements. It is Congress' willing abnegation of this power that we fear. The Framers of our Constitution were students of history. They were well versed in the decline of the Roman Empire. They knew that the decline was traceable to the Roman Senate's willing cession of its powers to the Emperor, and that the end result was tyranny. Our Founding Fathers also were well versed in the rise of modern democratic governments. They knew that the development of democracy in England paralleled the gradual control asserted by Parliament over the purse.

Consequently, the power of the purse was directly vested in Congress. Members of Congress were given the sole responsibility for raising revenue and determining spending. After considering and amending bills and resolutions, they were to be submitted to the President for his signature or his veto. The President was not to be involved in the legislative process beyond either approving or disapproving the end result. A primary reason for granting the President a veto on legislation was to serve as a check on Congress passing legislation that may serve narrow interests but not the broader national interest. The Framers feared a concentration of power. It was preferable to have the greatest power of government in the hands of the most diffuse, most accountable branch, but allowing that power to be totally free in its exercise also invited abuse. The President's veto authority was to give him some ability to block legislation. It was not, however, intended to involve him in its formulation.

An additional reason for vesting the power of the purse in Congress was because Members represent individual States and districts as well as the Nation. The United States is a union of States; giving Congress this power has helped ensure that individual States' interests have not been drowned out by national or regional concerns. The Senate, in particular, was created to protect the interests of the States. Without the Senate, more populous States would be able to exercise total dominance over smaller States.

Congress is giving the President this tremendous legislative authority in an exercise of self-flagellation. Some Senators have claimed that individual line items and tax expenditures are often passed that are little more than raids on the Treasury for narrow special interests. These so-called porkbarrel line items, even by their admission, make up a small part of the tax and spending bills passed by Congress. They then claim that this spending is partially responsible for the massive debt that has accumulated in the last 15 years, and have concluded that Congress is incapable of restraining itself from passing such line items. It is this analysis, and the readiness with which it has been received by the American public, which disturbs us. The debt is the result of aberrant policy decisions pushed by then-President Ronald Reagan in the 1980's, and acquiesced in by Congress. So-called porkbarrel spending did not cause the debt, and is not causing deficit spending today. Nevertheless, the perception is that Congress is to blame, and the cry is to strip power from it and give it to the President. Just as in the Roman Senate, Senators today are leading the chorus.

S. 4 has one saving grace--it is blatantly unconstitutional, and we are confident therefore that the Supreme Court will soon strike it down. The Constitution sets forth a very clear and detailed process by which any change to a law must be made. It must pass both Houses, differences must be resolved, and it must be presented to the President. Congress cannot constitutionally pass a law that says that future laws may be picked apart based on explanatory statements and other congressional documents that accompanied those laws. In *INS* v. *Chadha*, the Supreme Court specifically prohibited such legislative vetoes. If any legislative action is to alter the rights, duties, and relations outside the legislative branch, it must have gone through the constitutional requirements of bicameralism and presentment to the President. Similarly, these requirements absolutely prohibit the President from unilaterally cancelling pieces of a law. When Congress passes a law, it weights each item in relation to the others. Removing selected items after enactment changes the character of a law, and is thus, in essence, the equivalent of passing new laws. The President cannot constitutionally be given the right to pass new laws unilaterally.

There is no sense in belaboring the point. The die is cast. A majority of Members will listen to neither the voice of reason nor the voice of experience. They are convinced that Congress is to blame for excessive spending, and their solution is to give the President the power to reorder spending priorities. We will vote against this bill, but we know that it will pass overwhelmingly. Happily, we are confident that the Supreme Court will soon rule that it is unconstitutional.